IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4952 OF 2006

Smt.Harubai S. Kamble ....Petitioner
V/s.
Union of India & Ors. ....Respondents

Mr.S.P. Saxena for the Petitioner.

Mr.G. Hariran with Ms.Rituja Ambekar i/b Mr.S.S. Sarker for the Respondents.

CORAM : F.I. REBELLO &
S.J. VAZIFDAR, JJ.
DATED : 20TH FEBRUARY, 2007.

P.C. :

1. Rule. Rule returnable and heard forthwith.

2. Respondent No.2 is the Engineer-in-Chief (EIA), Army Headquarters, New Delhi. Respondent No.3 is the Commandant, College of Military Engineering, Pune.

3. The Petition challenges an order of the Central Administrative Tribunal dated 28.11.2005, dismissing the Petitioner's Misc.Petition No.236 of 2005 seeking restoration of the Petitioner's Original Application No.414 of 2004, which was dismissed on 10.12.2004. The impugned order was passed on the

ground that the Misc.Petition was taken out belatedly on 2.2.2005 i.e. about seven weeks after the dismissal of the Original Application on 10.12.2004.

4. The Petitioner's case is that her husband one Shankar Kamble was appointed as a casual Mazdoor (unskilled) under Respondent No.3. However, his services were not regularized. He expired on 31.5.1989 while he was still a casual labourer. According to the Petitioner, her husband had rendered over 26 years of service with Respondent No.3 before he expired. It is in these circumstances that the Original Application No.414 of 2004 was filed.

5. It does appear that the Petitioner was prosecuting the Petition. For instance she even filed Misc.Petition No.430 of 2004 for bringing the children on record which was heard for instance on 8.9.2004 and 3.11.2004. However, on 10.12.2004 the Petitioner's advocate was absent and the Original Application was dismissed for non-prosecution.

6. It is pertinent to note that the Petitioner received a copy of the order only on 17.1.2005. Within two weeks the Petitioner filed the said Misc.Petition No.236 of 2005 for restoration. In

these circumstances, it cannot be stated that the application was filed belatedly.

7. It was not contended on behalf of the Respondents that there was any statutory bar or that the delay, if any, could not be condoned.

8. In the circumstances, the impugned order is set-aside and the Original Application No.414 of 2004 shall be heard on merits.

9. Rule is made absolutely accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

(S.J. VAZIFDAR, J.) (F.I. REBELLO, J.)